

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2390 of 2016

IN

Civil Writ Jurisdiction Case No. 14958 of 2016

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1. Anil Kumar Choudhary, Son of Late Mahavir Choudhary, Resident of Village + Post Belauri, P.S. Rani Patra (Sadar) District Purnia.
 2. Bablu Oraon, Son of Late Mangal Oraon, Resident of Maharaja Hata, Near Purnia Court, Gumati NO.3, P.S. K.Hat, District Purnia.
 3. Ranjit Kumar, Son of Late Hare Krishna Thakur, Resident of Gokul Babau Ka Hata, Khiru Chouk Zila School Road, Bhatha Bajar Purnia, Post Bhatha Bajar P.S. K. Hat, District Purnia.
 4. Bharti Kumari, daughter of Late Baidyanath Kishku, resident of Village Tarauni, Post Office Kukraun no. 2 P.S.Dhamdaha, District Purnia, at Present address Mohalla oil Tola, Churiapur Road, P.S. K.Hat, District Purnia.

.... Petitioners-Appellant/s

Versus

1. The High Court of Judicature at Patna, through the Registrar General, Patna High Court, Patna.
2. The Registrar (Administration) High Court of Judicature at Patna.
3. The District & Sessions Judge, Purnia Judgeship Purnia.
4. The Administrative Officer, Purnia Judgeship Purnia.

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kumar Roy, Advocate

For the Respondent/s : Mr. Mrigank Mauli, Advocate

Mr. Prince Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

Seeking exception to an order dated 07.12.2016 passed by the Writ Court in CWJC No.14958 of 2016 in the matter of grant of compassionate appointment to the appellants herein; this appeal has been filed under Clause 10 of the Letters Patent.

The writ petition was dismissed by the learned Single Bench only on account of the fact that once the appointment for grant of



compassionate appointment has changed by introducing a Scheme for granting only appointment to the extent of 3 % to the sanctioned strength of Class IV posts and when no posts were available, the claim of the petitioners for compassionate appointment cannot be entertained and by applying the law laid down by the Supreme Court in the case of **State Bank of India & Anr Versus Raj Kumar**, (2010) 11 SCC 661, the writ petition has been dismissed.

Inter alia contending that on the basis of a Scheme which came into force subsequently in the year 2016, the claim of the petitioners for grant of compassionate appointment could not be rejected, this appeal has been filed and on consideration of the facts that have come on record we find that the petitioners four in number filed the writ petition challenging a common order, Annexure-1 dated 24.06.2016 whereby it was intimated to them that in view of the fact that 3 % of the posts reserved for compassionate appointment stand filled, their claim for compassionate appointment cannot be considered.

However, the question is as to whether this change of policy introducing the 3% restriction will apply even in the case of the petitioners is a matter of concern in this writ petition.

The petitioners are legal heirs of the employees, who were working in the Judgeship of Purnea in the State of Bihar, and the employees concerned were working in the said district and they died in



harness sometime in the year 2012. All the four petitioners submitted their applications on various dates and the interview and the process of selection was undertaken in the year 2013 and vide communication dated 20.09.2014, the petitioners were found fit for appointment and recommendation was made to the High Court for granting them appointment. However, for one reason or the other, the matter remained pending with the High Court and in the meanwhile, the policy for grant of compassionate appointment changed and impugned action was taken.

Learned counsel for the petitioners argued that the judgment in the case of **Raj Kumar** (supra) will not apply in the facts and circumstances of the present case and he places heavy reliance on a judgment of the Supreme Court in the Case of **State Bank of India and others Versus Jaipal Kaur** [(2007) 9 SCC 571] to say that a case for compassionate appointment has to be considered based on the relevant scheme which was prevalent when the application for compassionate appointment was filed and not on the basis of a scheme which came into force when consideration was made.

Learned counsel for the High Court argued that the judgment in the case of **Jaipal Kaur** (supra) was also considered in the case of **Raj Kumar** (supra) and, therefore, the said judgment will not apply. However, we find that in the matter of grant of compassionate appointment and with regard to the applicability of a Scheme of a



particular year has been reconsidered by the Supreme Court in the case of **Canara Bank and another Versus M. Mahesh Kumar** [(2015) 7 SCC 412] and on going through the aforesaid judgment, we are of the considered view that the question of grant of compassionate appointment has to be reconsidered. *Prima facie*, on going through the judgment rendered in **M. Mahesh Kumar** (supra), it seems that a subsequent scheme which came into force after the application was filed may not apply in a case of grant for compassionate appointment.

However, in this case, a question would be as to whether after the interviews and tests were held and when the petitioners were found eligible and their cases were referred to for appointment on 20th September, 2014, could, their claim, be rejected on the basis of change of policy in the year 2016. We find that neither the High Court, nor the Writ Court have examined this issue in right perspective, therefore, it is a fit case where the matter should be remanded to the High Court for reconsideration in the backdrop of the principles of law discussed hereinabove, particularly in the case of **M. Mahesh Kumar** (supra).

Accordingly, we allow this appeal, quash the order dated 07.12.2016 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.14958 of 2016 and the order dated 24.06.2016 (Annexure-1 to the writ petition) and remand the matter back to the High Court for reconsideration. The High Court shall reconsider the issue and decide the



same within a period of three months from the date of receipt of a certified copy of the order.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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